

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LUIS ALBERTO LEAL ROMERO,

Plaintiff,

v.

NECTAR RESTAURANT CORP. (d/b/a
Nectar), and GEORGE KYRKOSTAS,

Defendants.

20-Cv-9701 (SHS)

ORDER

SIDNEY H. STEIN, U.S. District Judge.

At a fairness hearing on November 2, 2021 on plaintiff's motion for a settlement approval (ECF No. 27), the Court disapproved the first proposed settlement on the grounds that it was not fair and reasonable. (ECF No. 28.) The Court subsequently disapproved the parties' second proposed settlement agreement (ECF No. 39) at a March 10, 2022 hearing on the same grounds. (ECF No. 41.)

On June 29, 2022, the parties moved for approval of a third proposed settlement agreement. (ECF Nos. 44, 44-1.) The Court, having reviewed the third proposed settlement agreement pursuant to the considerations set forth in *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015), finds that—but for the sole problem outlined below—the third proposed settlement agreement would be fair and reasonable. Among other factors, it:

- provides for a release limited to wage and hour claims;
- ensures that separate checks are made out to plaintiff and to plaintiff's counsel; and
- limits counsel's recovery to no more than thirty percent (\$18,280) of the total settlement amount of \$60,000.

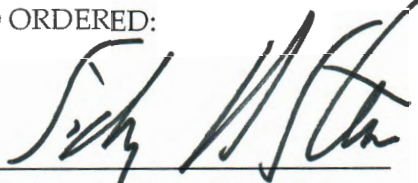
The Court would have approved the third proposed settlement agreement *but for* a logical inconsistency as to the sequencing of the initial payment and the filing of a stipulation of voluntary dismissal with prejudice. The agreement states that the initial payment is "to be made within thirty (30) days of the court's dismissal of this action." (ECF No. 44-1, at 1.) Yet the agreement elsewhere directs the plaintiff "to dismiss and withdraw the Action by executing the Stipulation of Voluntary Dismissal with Prejudice against all defendants in the form annexed hereto as Exhibit B ('Stipulation'), which Stipulation shall be filed by Plaintiff's Attorney *within seven (7) days of receipt of the Initial Payment*, on ECF to be reviewed, approved, and So-Ordered by the Court" ECF No. 44-1, at 4 (emphasis added). Moreover, the Court observes that despite the third proposed settlement agreement's language to the contrary, the "Stipulation of Voluntary Dismissal with Prejudice" is not annexed as Exhibit B and has not been provided to the Court.

Accordingly, IT IS HEREBY ORDERED that:

1. The proposed settlement (ECF No. 44-1) is disapproved as not fair and reasonable because it does not provide for a clear timeline of when the initial payment will be made and when the parties will file a stipulation of voluntary dismissal with prejudice;
2. If the parties desire to submit a fourth proposed settlement agreement for the Court's consideration, the parties are directed to rectify the errors outlined in this order and submit this fourth proposed settlement agreement for the Court's consideration by no later than July 7, 2022; and
3. The conference scheduled for July 5, 2022 is cancelled.

Dated: New York, New York
June 30, 2022

SO ORDERED:



Sidney H. Stein, U.S.D.J.